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OUTREACH: BRINGING THE ELIGIBLE INTO FEDERAL ASSISTANCE PROGRAMS

INTRODUCTION

“Outreach” has become part of the jargon of welfare law in the 1970’s, yet the meaning and significance of the word remain largely unexplored. In some contexts outreach refers only to activities designed to publicize a program. In other contexts the term also includes efforts to facilitate the participation of eligible persons once they become aware of the program. This Note will use the word “outreach” to include both informational and noninformational activities designed to draw eligible persons into public assistance programs.

The evolution of outreach in certain major federally funded assistance programs will be sketched, beginning with the food stamp program, which first focused attention on the subject. By outlining a range of activities that might fall under the broad heading of “outreach,” this Note will raise issues concerning the scope of outreach and the proper measure of outreach performance.

I

OUTREACH IN FEDERAL ASSISTANCE PROGRAMS

A. *The Food Stamp Experience*

1. *Background*

The Food Stamp Act of 1964,¹ which created the food stamp program,² requires participating states to comply with the federal statute and implementing regulations issued by the Food and Nutrition Service (FNS) of the Department of Agriculture,³ and to submit for FNS approval a plan of operation that meets federal standards.⁴ The original Act contained no explicit outreach direc-

¹ Pub. L. No. 88-525, 78 Stat. 703 (1964) (current version at 7 U.S.C. §§ 2011-2026 (1970 & Supp. V 1975)).

² The food stamp program is supervised nationally by the Food and Nutrition Service (FNS) of the Department of Agriculture. Under this program, low-income households may purchase stamps at a discount and then use them at their face value to buy food at participating stores. The amount of the discount depends upon the household's income. 7 U.S.C. § 2016(b) (1970).

³ 7 C.F.R. § 271.1(j) (1977).

⁴ 7 U.S.C. § 2019(e) (1970).

tive. Nevertheless, during the 1960's the Department of Agriculture conducted a "program promotion," using films, pamphlets, press conferences, and local organizations to publicize the food stamp program.⁵ Although this activity was primarily intended to "sell" the program to grocers and to provide general nutrition education for the poor, it also helped spread the word about food stamps.⁶ The Department's modest outreach efforts were not seriously challenged at high government levels for several years.

Then, in the late 1960's, a series of revelations focused national attention upon the tragedy of widespread hunger in America and the pathetic inadequacy of the nation's food programs.⁷ As a result, much criticism was aimed at the low rate of participation in the food stamp program.⁸ Critics blamed the inconvenient location of food stamp offices, their short or sporadic office hours,

⁵ See HOUSE COMM. ON AGRICULTURE, FOOD STAMP ACT OF 1976: REPORT ON H.R. 13613, H.R. REP. NO. 1460, 94th Cong., 2d Sess. 276 (1976) [hereinafter cited as FOOD STAMP 1976 REP.].

⁶ *Id.* The Consumer and Marketing Service (now FNS) began nutrition education programs in 1967 and 1968. Since 1968 the Extension Service of USDA has conducted these as the Expanded Food and Nutrition Education Program. See *id.*

⁷ See generally N. KOTZ, LET THEM EAT PROMISES (1969) [hereinafter cited as KOTZ]; G. STEINER, THE STATE OF WELFARE 220-36 (1971) [hereinafter cited as STEINER].

In April 1967, Senator Robert F. Kennedy and a Senate subcommittee journeyed to the Mississippi Delta and returned with eye-opening reports of malnourished children. See N.Y. Times, Apr. 10, 1967, at 13, col. 1; *Examination of War on Poverty: Hearings Before the Subcomm. on Employment, Manpower, and Poverty of the Senate Comm. on Labor and Public Welfare*, 90th Cong., 1st Sess., pt. 2, at 521-1066 (1967). One year later another exposé was released: HUNGER, U.S.A., A REPORT BY THE CITIZENS' BOARD OF INQUIRY INTO HUNGER AND MALNUTRITION IN THE UNITED STATES (1968) [hereinafter cited as HUNGER, U.S.A.]. This influential study estimated that approximately 15% of the population of the United States was then living in poverty and that commodities distribution and food stamps were reaching only 18% of those persons. *Id.* at 50. The report criticized the Department of Agriculture's management of the food programs committed to its charge. See *id.* at 49-68. Next came *Their Daily Bread*, a study by five national women's organizations, which explored the failure of the National School Lunch Act to reach many hungry children. See McGovern, *Introduction* to KOTZ, *supra* at vii [hereinafter cited as KOTZ (McGovern)]; STEINER, *supra* at 230. On May 21, 1968, CBS television followed up on the Citizens' Board report with a documentary entitled "Hunger in America," which further criticized the Department's ineffective operation of its food programs. A transcript from the documentary appears at 114 CONG. REC. 15,568 (1968). Finally, in the spring of 1968, the poor marched on Washington. See N.Y. Times, May 3, 1968, at 1, col. 5; *id.*, Apr. 29, 1968, at 23, col. 1.

⁸ E.g., HUNGER, USA, *supra* note 7, at 10, 44. See STEINER, *supra* note 7, at 213-32. In September 1969, a Senate committee estimated that nationally only 21.6% of the poor living in counties where food stamps were available participated in the program. SENATE SELECT COMM. ON NUTRITION AND HUMAN NEEDS, 91ST CONG., 1ST Sess., POVERTY, MALNUTRITION, AND FEDERAL FOOD ASSISTANCE PROGRAMS: A STATISTICAL SUMMARY 29 (Comm. Print 1969). See also KOTZ, *supra* note 7, at 55.

long lines, inaccessible officials, a lack of information about the program, and the stigma attached to participation.⁹ One private study urged the need for outreach workers to educate the public about food stamps and to "improve participation and utilization of the program."¹⁰

2. *An Outreach Mandate*

This background of concern over the low rates of participation in the food stamp program led Congress to amend the Food Stamp Act in December 1970¹¹ by adding an explicit directive to the states to undertake outreach activities. The amendment required that every participating state submit to FNS a plan of operation providing, among other things,

that the State agency shall undertake effective action, including the use of services provided by other federally funded agencies and organizations, to inform low-income households concerning the availability and benefits of the food stamp program and insure the participation of eligible households.¹²

This passage, commonly referred to as section 2019(e)(5), became the key to food stamp outreach.¹³

To implement the amendment, FNS required the states to submit outreach plans by late January 1972.¹⁴ These plans were to include the designation of one employee to organize state and local outreach programs, a description of proposed methods for conducting and evaluating outreach, a timetable for implementing the

⁹ See HUNGER, USA, *supra* note 7, at 62; KOTZ, *supra* note 7, at 55.

¹⁰ HUNGER, USA, *supra* note 7, at 67.

¹¹ Pub. L. No. 91-671, 84 Stat. 2048-52 (1971) (amending 7 U.S.C. §§ 2011-2025 (1970)). Congress passed the amendments in late 1970, but the President did not sign them into law until Jan. 11, 1971. The amendments are referred to as both the 1970 and 1971 amendments.

¹² *Id.* § 6(b), 84 Stat. at 2051 (amending 7 U.S.C. § 2019(e) (1970)).

¹³ Congress also amended the 1964 Act to authorize federal reimbursement of 62% of the salary, travel, and travel-related expenses of state employees during their participation in outreach activities. *Id.* § 8, 84 Stat. at 2052 (amending 7 U.S.C. § 2024(b)(1) (1970)). A 1974 amendment replaced this provision with an authorization for federal reimbursement of 50% of all state administrative expenses, including those attributable to outreach. Pub. L. No. 93-347, § 2, 88 Stat. 341 (1974).

¹⁴ 36 Fed. Reg. 14,106 (1971).

Besides soliciting state outreach, FNS also sponsored a national "Project Find" in 1972 to reach eligible elderly. See SENATE SELECT COMM. ON NUTRITION AND HUMAN NEEDS, 94TH CONG., 1ST SESS., REPORT ON NUTRITION AND SPECIAL GROUPS, pt. 1, at 52-53 (1975) [hereinafter cited as REP. ON NUTRITION].

plan, and a cost estimate.¹⁵ Each state also had to submit annually a revised plan and a detailed report on outreach progress, including steps taken to reach specific target groups such as the elderly, ethnic groups, and migrant workers.¹⁶ The Department had approved forty-eight outreach plans by January 1974.¹⁷

These statutory and administrative requirements for state outreach did not, however, secure compliance.¹⁸ During 1972 and 1973 a barrage of lawsuits attacked the outreach programs of twenty-two states.¹⁹ These efforts to achieve outreach reform through judicial action culminated in the 1974 federal district court decision in *Bennett v. Butz*.²⁰

3. *Bennett v. Butz: The Mandate for the Federal Government*

In June 1973, food stamp recipients and two welfare recipient organizations²¹ sued the Secretary of Agriculture and subordinate administrators of the food stamp program.²² They charged, among other things,²³ that the defendants had failed to implement the clear outreach mandate of section 2019(e)(5).²⁴ The Secretary, plaintiffs alleged, had neither required adequate outreach plans from the states nor taken appropriate administrative steps to effect state compliance with the statute.²⁵

¹⁵ See FOOD STAMP 1976 REP., *supra* note 5, at 330.

¹⁶ See *id.* at 300.

¹⁷ *Id.* at 330.

¹⁸ See REP. ON NUTRITION, *supra* note 14, pt. 1, at 47-48, 107-08. See also *id.* at 26-30 (participation rates by state).

¹⁹ See FOOD STAMP 1976 REP., *supra* note 5, at 331. In 17 states these lawsuits were organized by the Food Research and Action Council (FRAC). *Id.* See generally 122 CONG. REC. E4,294-95 (daily ed. Aug. 3, 1976) (reprint of *Time* magazine article discussing FRAC).

²⁰ 386 F. Supp. 1059 (D. Minn. 1974).

²¹ These organizations were the Northwoods Welfare Committee of Anoka County and the National Welfare Rights Organization. The court denied class action status on grounds that the relief requested by the plaintiffs would be the same whether or not they proceeded as a class. *Id.* at 1062 n.1.

²² In addition to the Secretary of Agriculture, the defendants were the Administrator of FNS and the Director of the Food Stamp Division of FNS.

²³ Plaintiffs also claimed that the Secretary of Agriculture's Economy Food Plan was inadequate to afford participants the "opportunity to obtain a nutritionally adequate diet" as required by 7 U.S.C. §§ 2013(a), 2014(a), & 2016(a) (1970 & Supp. V 1975), and that the Secretary's failure to adjust benefits to meet increasing food costs during fiscal year 1973 was inconsistent with the statute. The court rejected both claims. 386 F. Supp. at 1063, 1069-70.

²⁴ 386 F. Supp. at 1062-63.

²⁵ *Id.* Plaintiffs argued that because of this failure a significant portion of the \$2.5 billion appropriated for the food stamp program for fiscal 1973 would remain unspent. *Id.*

In October 1974, District Judge Lord granted plaintiffs summary judgment on their outreach claims. He held that, given the clear congressional intent to make section 2019(e)(5) a forceful outreach mandate, defendants' failure to require effective state outreach constituted an abuse of administrative discretion. Judge Lord ordered the Department of Agriculture to review state outreach plans and to bring both the plans and their implementation into compliance with standards set by the statute and the court's opinion.²⁶

The heart of the *Bennett* decision was its finding of a clear and forceful statutory outreach mandate. The court cited the strong language²⁷ and the legislative history of section 2019(e)(5) to support its characterization of that provision as a clear mandate for effective outreach.²⁸ In addition, Judge Lord noted that other 1971 amendments also reflected a congressional intent to strengthen and expand the food stamp program to truly meet the nutritional needs of the nation's poor.²⁹ The court found further evidence of this intent in the pattern of increasing congressional appropriations for the program.³⁰

at 1062. They therefore sought an order directing the Secretary of Agriculture to submit to the court a plan for spending that surplus in accordance with the Food Stamp Act. *Id.* On June 24, 1973, plaintiffs obtained a preliminary injunction preventing the reversion of \$278.5 million of unspent surplus into the general treasury fund at the close of fiscal year 1973. While the case was pending, Congress amended the Food Stamp Act to provide that "[s]ums appropriated . . . shall . . . continue to remain available until expended." Pub. L. No. 93-86, § 8(j), 87 Stat. 221, 248 (1973).

²⁶ 386 F. Supp. at 1072. The court held that the refusal to spend funds already appropriated constituted impoundment of those funds. *Id.* at 1071. It decided, however, that requiring a plan for expenditure of the funds would be less effective than requiring a plan for implementation of the statutory outreach mandate. The court thus ordered the latter relief, believing that expenditure of the leftover funds would follow. *Id.* at 1070-71.

²⁷ The passage is quoted in the text accompanying note 12 *supra*.

²⁸ 386 F. Supp. at 1064-65.

²⁹ *Id.* at 1064. In 1971, Congress revised the Act's Declaration of Policy to emphasize the policy of alleviating hunger and malnutrition through the food stamp program. *See* Pub. L. No. 91-671, § 1, 84 Stat. 2048 (1970) (amending 7 U.S.C. § 2011 (1970)). Congress also revised the standards for coupon allotment, requiring the Secretary to establish allotments that more clearly provided eligible households with the opportunity to obtain nutritionally adequate diets. *See id.* §§ 3, 5, 84 Stat. 2049, 2050 (1970) (amending 7 U.S.C. §§ 2013(a), 2016(a) (1970)). Finally, Congress added a provision for annual cost of living adjustments. *Id.* § 5, 84 Stat. 2050 (1970) (amending 7 U.S.C. § 2016(a) (1970)) (In 1973 this section was amended to require semi-annual adjustments; Pub. L. No. 93-86, § 3(m), 87 Stat. 248 (1973)).

³⁰ 386 F. Supp. at 1064. Congress increased the appropriation from \$1.75 billion for fiscal year 1971 (Pub. L. No. 91-671, § 9, 84 Stat. 2048, 2052 (1971)) to \$2.2 billion for fiscal year 1972 (Pub. L. No. 92-73, 85 Stat. 183, 200 (1971)). For fiscal year 1973, the crucial year in *Bennett*, Congress made \$2.5 billion available. Pub. L. No. 92-399, 86 Stat.

But what does this mandate require of the federal government? The *Bennett* court listed four elements of the Secretary of Agriculture's "total failure . . . to do what the Congress clearly intended him to do":³¹

- 1) delayed implementation of outreach at the federal level;³²
- 2) issuance of regulations and instructions that diluted or were inconsistent with the statute;³³
- 3) approval of state plans that failed to meet statutory standards;³⁴ and
- 4) failure to enforce administrative sanctions against states with defective outreach programs.³⁵

These four elements suggest an outline of federal responsibility for outreach under the current statute.

The legacy of *Bennett* has been substantial. Many of the lawsuits begun during the 1972-1973 food-stamp-reform campaign were settled in *Bennett's* wake as states brought their outreach plans

591, 610 (1972). According to the court in *Bennett*, "[t]he need for outreach was a principal basis for this increased appropriation." 386 F. Supp. at 1064.

³¹ 386 F. Supp. at 1065. The court, in conclusion, found "no basis in the voluminous record before [it] for any suggestions whatever that the defendants undertook and required effective action to insure the participation of [the] eligible poor." *Id.* at 1069.

³² *Id.* at 1065. Judge Lord noted that the Secretary had waited three months before issuing proposed regulations, another three months before issuing final regulations, and almost another six months before issuing specific instructions to the states. *Id.* The court also noted that the January 1972 deadline for submission of state outreach plans fell over a year after the outreach amendment became effective, and that the Secretary had extended this deadline as plans trickled in late. *Id.*

³³ *Id.* The statute directed the states to "insure the participation of eligible households." 7 U.S.C. § 2019(e)(5) (Supp. V 1975). The Department's proposed regulations had adopted that language (see 36 Fed. Reg. 7,240, 7,243, 7,245, 7,248 (1971)), but the final regulations diluted the mandate, substituting the word "encourage" for "insure" (see *id.* at 14,103, 14,105).

³⁴ 386 F. Supp. at 1065. The court listed some of the deficiencies that should have drawn administrative disapproval: failure to designate sufficient employees' time and travel expenditures for federal reimbursement; failure to budget sufficient funds for outreach; failure to estimate the number of eligible persons not receiving food stamps or to determine the feasibility of reaching all eligible persons; failure to designate a full-time outreach coordinator with clearly defined responsibilities; and failure to explain how outreach would be effected where federal financial reimbursement was not requested. *Id.* at 1067.

³⁵ *Id.* at 1065. The court held that this failure was an abuse of discretion. *Id.* at 1067. The Food Stamp Act then—as now—required the Secretary to inform state agencies of any failure to comply substantially with the Act. 7 U.S.C. § 2019(f) (1970). It also directed the Secretary to suspend the issuance of coupons to any state that failed to correct the non-compliance within a reasonable time. *Id.* However, the Secretary had not even applied these sanctions against "those states most derelict" in submitting their plans. 386 F. Supp. at 1066. Nor had he used his administrative clout to secure effective implementation of state plans. *Id.*

into compliance with federal standards.³⁶ But one case prominent among *Bennett's* progeny, *Tyson v. Norton*,³⁷ added important dimensions to the developing law of outreach. Building upon the *Bennett* foundation, the *Tyson* court read section 2019(e)(5)'s mandate broadly and suggested the type of requirements it imposes on the states.

4. *Tyson v. Norton: The Mandate for the States*

Tyson v. Norton was a class action against the Commissioner of the Connecticut Welfare Department. Unlike *Bennett*, which involved federal defendants and federal supervision of state outreach, *Tyson* was a suit against state officials in which plaintiffs challenged the form and implementation of a state plan. Plaintiffs alleged ten violations of the letter and spirit of the Food Stamp Act and its implementing regulations and instructions.³⁸ One charge accused the state of violating the outreach mandate of section 2019(e)(5).³⁹ Related charges complained of the state's failure to encourage immediate application by persons who inquired about the program⁴⁰ and its refusal to allow telephone or home interviews for applicants who had difficulty coming for a personal interview.⁴¹ Judge Blumenfeld held for the plaintiffs on these is-

³⁶ See FOOD STAMP 1976 REP., *supra* note 5, at 331. See, e.g., Greater Cleveland Welfare Rights Org. v. Butz, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) ¶ 20,444 (S.D. Ohio 1975) (stip. & order). The court in that case ordered the state to establish a toll-free telephone number to provide food stamp information seven days a week. It also required the defendants to provide publicity to news media, appoint a full-time outreach coordinator, disseminate information to a large list of named organizations, keep certain written information available, and hold workshops to train outreach workers.

³⁷ 390 F. Supp. 545 (D. Conn.), *aff'd in pertinent part sub nom. Tyson v. Maher*, 523 F.2d 972 (2d Cir. 1975).

³⁸ See *id.* at 549.

³⁹ See *id.*

⁴⁰ See *id.* Federal regulations require food stamp officials to process applications within 30 days of receipt. 7 C.F.R. § 271.4(a)(3) (1977). Plaintiffs were concerned because failure to inform persons of their right to apply immediately postponed the beginning of the 30-day period and thus the receipt of benefits.

⁴¹ See 390 F. Supp. at 549. In certain cases, an interview is necessary to establish eligibility for food stamp benefits. 7 C.F.R. § 271.4(a)(2) (1977). According to federal regulations, the interview may be conducted at the food stamp office, at the applicant's home, or by telephone. *Id.* Federal instructions restrict the circumstances under which home and telephone interviews may be substituted for office visits (FNS(FS) Instruction 732-1 (11) (B) (2), *quoted in Tyson*, 390 F. Supp. at 559), but Connecticut had established an even more restrictive policy: no telephone interviews, and home interviews only for applicants who were elderly and homebound and living alone. The state did not take into account illness, injury, child care, distance, or the availability of public transportation. See 390 F. Supp. at 558-59.

sues. His order outlined specific steps that the state had to take to secure "full participation" of eligible food stamp recipients.⁴²

Judge Blumenfeld adopted *Bennett's* finding of a strong statutory mandate.⁴³ He stressed the importance of the informational aspect of the state's program,⁴⁴ but rejected the notion that the mandate required informational projects only.⁴⁵ Rather, he characterized the statute as a "'full participation' amendment"⁴⁶ to emphasize that a state is required not only to reach out to the eligible population, but also to clear the way for their participation.⁴⁷ Even more, a state must take effective action to *insure* that participation.⁴⁸ Under the banner of "insuring the participation," Judge Blumenfeld required Connecticut to establish an official policy of encouraging immediate application by persons inquiring about the program.⁴⁹ He also ordered the state to allow more telephone and home interviews to accommodate the homebound.⁵⁰ He recommended the solicitation of outside groups to provide transportation and help applicants fill out applications, and also recommended expanding Connecticut's circuit-rider program, which took the food stamp program to outlying areas.⁵¹ Thus the *Tyson* opinion brought whole new categories of administrative activity under the outreach umbrella.

⁴² 390 F. Supp. at 574.

⁴³ *Id.* at 552. See notes 27-30 and accompanying text *supra*. Judge Blumenfeld, however, refused to incorporate the federal administrative regulations and instructions as part of that mandate because, as he learned from *Bennett*, "[i]n this case the clear and obvious language of the statutory mandate with which the defendants [were] bound to comply [was] being distorted by administrative regulations." 390 F. Supp. at 552. See note 33 and accompanying text *supra*.

⁴⁴ Both the opinion's analysis of the defendant's outreach track record and the relief order stressed informational activities. 390 F. Supp. at 553-60, 570. The court went through Connecticut's publicity efforts with a fine-toothed comb, considering such details as the number of outside organizations contacted and who had initiated those contacts. *Id.* at 556. The relief order required Connecticut to seek the cooperation of public and private groups, and to launch a "full-scale and continuing media campaign." *Id.* at 574.

⁴⁵ *Id.* at 562.

⁴⁶ *Id.* at 550.

⁴⁷ *Id.* at 552.

⁴⁸ *Id.*

⁴⁹ *Id.* at 574. *But cf.* *Perez v. Lavine*, 412 F. Supp. 1340, 1349 (S.D.N.Y. 1976) ("[I]t is reasonable to expect that someone desiring public assistance would specifically ask for an application if he is not automatically given one . . .").

⁵⁰ 390 F. Supp. at 574. The Second Circuit affirmed that part of the district court's order requiring Connecticut to allow telephone or home interviews for homebound applicants. 523 F.2d at 974.

⁵¹ 390 F. Supp. at 574.

5. *Sequel*

Subsequent administrative, judicial, and legislative activity reflects the impact of *Bennett* and *Tyson*. In April 1975, pursuant to the court's order in *Bennett*, the Department amended its regulations⁵² to include an elaborate provision that, together with section 2019(e)(5), constitutes the heart of the current food stamp outreach mandate:

Each State agency shall initiate and monitor effective, comprehensive ongoing efforts performed cooperatively with other public and private agencies, religious, business and civic groups, retail trade associations, unions, community organizations, news media, and other groups, organizations and associations to inform low-income households eligible to receive food stamps of the availability and benefits of the program and to insure the participation of eligible households which wish to participate by providing such households with reasonable and convenient access to the program. Such efforts . . . shall . . . take into consideration the special needs of, among others, the elderly, the disabled, migrants, persons residing in rural areas, and ethnic groups. Each State agency shall designate one person to serve full-time as State Outreach Coordinator . . . and shall provide such coordinator with clerical and support staff . . . Each State agency shall provide project area outreach coordinators . . .⁵³

The Department also required submission of detailed new state plans of operation by July 1, 1975, and their implementation by August 1.⁵⁴ Every state submitted a new outreach plan by the July 1 deadline, and by August 1976 all but four plans had been approved.⁵⁵

Despite administrative reform, however, many state programs remain susceptible to attack. In June 1976, a challenge to Michigan's food stamp outreach program was settled in federal district

⁵² See 40 Fed. Reg. 16,069 (1975).

⁵³ 7 C.F.R. § 271.1(k) (1977). Later in April, the Department released new instructions. Under these, an outreach coordinator in every project area must send monthly reports to the state coordinator who, in turn, must send semi-annual reports and revised plans to the Department of Agriculture. The instructions outline the minimum content required for these reports. See *FOOD STAMP 1976 REP.*, *supra* note 5, at 331-32.

In September 1975, the Department amended its regulations again, pursuant to *Bennett*, to provide that persons applying for federally aided public assistance must be given the opportunity to apply for food stamps at the same time. 40 Fed. Reg. 43,017 (1975).

⁵⁴ See *FOOD STAMP 1976 REP.*, *supra* note 5, at 331-32.

⁵⁵ See *id.* at 332.

court with an unusually detailed stipulation for improving Michigan's outreach plan.⁵⁶ As recently as December 1976, plaintiffs attacking a New York county's program of outreach to migrant farmworkers obtained a settlement under which the county agreed to implement a Food Stamp Migrant Farmworkers Program.⁵⁷

Congress continues to review its stance on outreach. In 1976, the House and Senate each considered proposals to cut back the current outreach mandate to its purely informational component. The Food Stamp Act of 1976,⁵⁸ reported by the House Committee on Agriculture in September 1976, would have replaced the current mandate with the following provision:

Such [state] plan of operation shall provide . . . (1) that the State agency shall inform low-income households about the availability, eligibility requirements, rules and benefits of the food stamp program, including, but not limited to, notification of all social security, aid to families with dependent children, supplemental security income, and unemployment compensation recipients, (B) not conduct any other outreach activities of a non-informational nature in those political subdivisions in which a community action program under the Community Services Administration is in operation and conducting food stamp outreach, and (C) use appropriate multilingual personnel and printed material in the administration of the programs in those portions of political subdivisions in the State in which a substan-

⁵⁶ *Westside Mothers Welfare Rights Org. v. Butz*, [1977] *Pov. L. REP. (CCH)* ¶ 22,975 (W.D. Mich. June 15, 1976) (stip. & order). Plaintiffs named both federal and state administrators as defendants and blamed them for Michigan's "non-existent outreach efforts." Plaintiffs' Complaint at 4. The terms of the final settlement called for the annual computation of the number of persons eligible for food stamps in each county, the submission of annual county outreach plans to the state, the appointment of area food stamp "specialists" to specific assignments, and a system of written certification to record when persons seeking application or redetermination for AFDC, Medicaid, General Assistance, or Social Services were informed of their possible eligibility for food stamps. The parties also agreed to the submission of extensive information to the plaintiffs by Michigan's Food Stamp Coordinator in accordance with a stipulated time schedule.

⁵⁷ *Thomas v. Kramer*, 10 *CLEARINGHOUSE REV.* 802 (S.D.N.Y. Dec. 1, 1976) (consent order). Pursuant to the Food Stamp Migrant Farmworkers Program, the Commissioner of Social Services agreed to determine when the migrants would arrive at local farm labor camps. Upon their arrival, a food stamp worker would take food stamp applications to the camps. These applications would be processed immediately and, in emergency cases, benefits issued within 24 hours. During the farmworking season, the local Food Stamp Unit would employ a full-time worker for the Program. In addition, the Program would distribute to every labor camp sufficient pamphlets and posters in the language necessary to inform the workers about food stamps. *Id.* at 803.

⁵⁸ H.R. 13613, 94th Cong., 2d Sess., reprinted in *FOOD STAMP 1976 REP.*, *supra* note 5, at 1.

tial number of members of low-income households speak a language other than English⁵⁹

Although the bill preserved and elaborated upon the requirement of informing the public about food stamps,⁶⁰ it dropped all references to insuring participation—a conspicuous retreat from the holdings of *Bennett* and *Tyson*. The proposal drew fire in Congress, both from critics urging the continued need for broad outreach⁶¹ and from those arguing that the language of the amendment was too demanding and could be interpreted to require more than a reasonable level of outreach.⁶² The proposed National Food Stamp Reform Act that passed the Senate in April 1976⁶³ also emphasized informational outreach to the exclusion of other outreach activities.⁶⁴ Like its counterpart in the House, the Senate proposal eliminated the “insure the participation” requirement.⁶⁵ The legislative history suggests concern that the current mandate to “insure” participation demands unrealistically extensive efforts by food stamp administrators.⁶⁶

B. *Outreach in Other Programs*

The food stamp experience called attention to a need now officially acknowledged in other programs as well. Outreach has been expanded, for example, into other nutrition programs ad-

⁵⁹ *Id.* § 10(e), FOOD STAMP 1976 REP. at 9-10. The reference to the Community Services Administration reflects the Committee's concern that USDA's outreach efforts were being duplicated by CSA. See FOOD STAMP 1976 REP., *supra* note 5, at 333-35. CSA (formerly the Office of Economic Opportunity) operates the Senior Opportunities and Services program (SOS), which offers a variety of services, including outreach, to promote the utilization of government services by the elderly poor. See SENATE SPECIAL COMM. ON AGING, DEVELOPMENTS IN AGING: 1975 AND JANUARY-MAY 1976, S. REP. No. 998, pt. 1, 94th Cong., 2d Sess. 199-200 (1976) [hereinafter cited as DEVS. IN AGING 1975-1976].

⁶⁰ The Committee was particularly concerned that food stamp information reach recipients of Social Security and SSI. FOOD STAMP 1976 REP., *supra* note 5, at 147.

⁶¹ See, e.g., *id.* at 626, 630 (dissenting views).

⁶² See, e.g., *id.* at 720 (dissenting views).

⁶³ National Food Stamp Reform Act of 1976, S. 3136, 94th Cong., 2d Sess., 122 CONG. REC. S5,283 (daily ed. Apr. 8, 1976).

⁶⁴ The Senate proposal directed the use of multilingual staff and printed material. *Id.* § 7(k), 122 CONG. REC. at S5,286. It also provided that “[f]ederal agencies that administer programs for needy people, including, but not limited to, supplemental security income and social security programs, shall make every reasonable attempt to inform recipients . . . of the existence of the food stamp program and its income and resource guidelines.” *Id.* § 7(a)(2), 122 CONG. REC. at S5,286.

⁶⁵ See *id.* § 7(b), 122 CONG. REC. at S5,286.

⁶⁶ See, e.g., 122 CONG. REC. S5,241, S5,245 (daily ed. Apr. 8, 1976) (statements of Senators Humphrey and McGovern).

ministered by the Department of Agriculture.⁶⁷ However, a comparison of the food stamp program with other federal public assistance programs shows that the government has been inconsistent in its acknowledgment of the need for outreach.

1. *Aid to Families with Dependent Children*

Aid to Families with Dependent Children (AFDC)⁶⁸ provides cash benefits for the basic living expenses of certain needy persons. Like the food stamp program, AFDC is administered by the states in accordance with plans approved by a supervising federal agency which promulgates regulations binding on the states.⁶⁹ But there is no statutory outreach provision for AFDC comparable to the "inform and insure" mandate of the food stamp program. One AFDC regulation does require the states to inform applicants about "coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance."⁷⁰ Since it applies only to applicants, however, this regulation requires no "reaching out" to inform the eligible or to solicit participation.⁷¹ The AFDC program takes a "doorstep approach" to outreach, specifically requiring only measures that facilitate the participation of persons who have already taken the initiative by expressing interest in applying.⁷²

⁶⁷ A 1975 amendment to the National School Lunch program, 42 U.S.C. §§ 1751-1768 (1970 & Supp. V 1975), authorized the Secretary of Agriculture to determine state "staffing needs and training program support required to conduct effective outreach for the purpose of reaching the maximum number of eligible children" for certain child nutrition programs. Act of Oct. 7, 1975, Pub. L. No. 94-105, § 19, 89 Stat. 526 (codified at 42 U.S.C. § 1767 (Supp. V 1975)). In November 1975, FNS asked each state participating in the School Breakfast program, 42 U.S.C. § 1773 (Supp. V 1975), to submit a plan for making the program available wherever needed, including a detailed scheme for informing schools and the public about it. 40 Fed. Reg. 54,452 (1975).

⁶⁸ 42 U.S.C. §§ 602-609 (1970).

⁶⁹ The Department of Health, Education, and Welfare supervises state administration of AFDC.

⁷⁰ 45 C.F.R. § 206.10(a)(2)(i) (1976). This regulation applies generally to programs under the Social Security Act.

⁷¹ In December 1976, the Department proposed amending this provision to require Social Security officials to furnish this information not only to applicants but to anyone who inquires about the program. 41 Fed. Reg. 56,832 (1976). Even this revision, however, would not require much "reaching out," since it assumes preexisting knowledge and interest on the part of the inquirer.

⁷² Cf. *Perez v. Lavine*, 412 F. Supp. 1340 (S.D.N.Y. 1976). Plaintiffs in that class action against New York City welfare administrators argued that the failure of officials to provide an application automatically to persons who came to the welfare office, the deterrent effect of the long lines at those offices, and the necessity of return visits all violated the AFDC

2. *Older Americans Act Programs*

The purpose of the Older Americans Act⁷³ is to coordinate and promote the resources and services available to the elderly in the areas where they live.⁷⁴ Because of its purpose, the legislation is imbued with a spirit of outreach.

Title II of the Act⁷⁵ established in HEW an Administration on Aging (AoA).⁷⁶ The Commissioner of AoA is directed to operate a National Information and Resource Clearing House, which provides agencies and organizations with information about programs for the elderly.⁷⁷ The Clearing House must also "encourage the establishment of State and local information centers and provide technical assistance to such centers . . . to assist older persons to have ready access to information."⁷⁸

Title III of the Older Americans Act⁷⁹ authorizes federal grants for a variety of state and local "social services" to the elderly.⁸⁰ The "social services" eligible for Title III funds⁸¹ include "services designed to encourage and assist older persons to use the facilities and services available to them."⁸² Every participating local-

statute and regulations, which state: "[A]ll individuals wishing to make application for aid to families with dependent children shall have opportunity to do so" (42 U.S.C. § 602(a)(10) (1970)); "Each individual wishing to do so shall have the opportunity to apply . . . without delay" (45 C.F.R. § 206.10(a)(1) (1976)). 412 F. Supp. at 1343-44. The court, however, refused to construe these provisions so broadly: "As long as the individual has the opportunity to obtain an application form upon request at the Income Maintenance center, he has the 'opportunity to apply' for assistance." *Id.* at 1353.

⁷³ 42 U.S.C. §§ 3001-3045i (1970 & Supp. V 1975).

⁷⁴ *Id.* § 3003 (Supp. V 1975). The Older Americans Comprehensive Services Amendments of 1973 strengthened this purpose. See Pub. L. No. 93-29, 87 Stat. 30 (1973).

⁷⁵ 42 U.S.C. §§ 3011-3020 (Supp. V 1975).

⁷⁶ *Id.* § 3011.

⁷⁷ *Id.* § 3014(a); SENATE SPECIAL COMM. ON AGING, DEVELOPMENTS IN AGING: 1973 AND JANUARY-MARCH 1974, S. REP. NO. 846, 93d Cong., 2d Sess. 229 (1974) (AoA report) [hereinafter cited as DEVS. IN AGING 1973-1974]. See generally DEVS. IN AGING 1975-1976, *supra* note 59, pt. 2, at 70-75 (AoA report).

⁷⁸ 42 U.S.C. § 3014(a)(3) (Supp. V 1975).

⁷⁹ *Id.* §§ 3021-3029.

⁸⁰ Here again a state's participation depends upon federal approval of the state's plan, in this case by the Commissioner on Aging. *Id.* § 3025. The state agency, in turn, must approve the plans of each "planning and service area" before federal money may flow through to help finance that area's "social services." *Id.* § 3024. See generally DEVS. IN AGING 1975-1976, *supra* note 59, pt. 2, at 47-50 (AoA report).

Outreach is usually an ancillary feature of a government program, the means by which eligible persons are drawn into the program. Title III, however, differs from other programs discussed in this Note in that its entire nature is outreach. Thus Title III and regulations promulgated under it contain some of the strongest outreach language in the law.

⁸¹ 42 U.S.C. § 3024(c)(1) (Supp. V 1975).

⁸² *Id.* § 3022(1)(C). The federal regulations suggest examples that reinforce the promi-

ity must establish a system to "facilitate accessibility to and utilization of all social services provided within the geographic area."⁸³ Title III also provides for a network of state and local "information and referral sources"⁸⁴ in sufficient numbers to guarantee that all older persons have "reasonably convenient access" to such services.⁸⁵

Title VII of the Older Americans Act⁸⁶ allots federal funds to states with approved plans for distributing those funds, by grant or by contract, to recipients who agree to operate nutrition programs for the elderly in accordance with federal standards.⁸⁷ Outreach is emphasized in Title VII programs, although it is an ancillary feature. The recipient of a state's grant or contract must provide for "*comprehensive and ongoing outreach activities* from each congregate meal site to assure that the maximum number of the hard-to-reach . . . eligible individuals participate in the nutrition project."⁸⁸ The recipient project must provide sufficient qualified staff to "assure satisfactory conduct of . . . [o]utreach."⁸⁹ Each program must also offer information and referral services and, if necessary, transportation and personal escort services to and from congregate meal sites.⁹⁰

nent outreach theme: (1) information services employing a specially trained staff—bilingual, if necessary—to inform needy elderly of services available and to help them take advantage of those opportunities; (2) referral services for placing individuals in contact with agencies providing services they need; (3) transportation where necessary to facilitate access to social services; (4) "search and find" activities; (5) escort services; and (6) counseling to aid in the utilization of health and social services. 45 C.F.R. § 903.2(g) (1976).

⁸³ 42 U.S.C. § 3022(3)(A) (Supp. V 1975). See *id.* § 3024(c)(1).

⁸⁴ An information and referral (I & R) source

(A) maintains current information with respect to the opportunities and services available to older persons, and develops current lists of older persons in need of services and opportunities, and (B) employs a specially trained staff to inform older persons of the opportunities and services which are available, and assists such persons to take advantage of such opportunities and services.

Id. § 3024(c)(3).

⁸⁵ *Id.* §§ 3024(c)(3), 3025(a)(7). AoA's goal was to make I & R reasonably available to all older persons by the end of fiscal year 1975. DEVS. IN AGING 1975-1976, *supra* note 59, pt. 2, at 54 (AoA report). See generally *id.* at 70-71 (AoA report).

⁸⁶ 42 U.S.C. §§ 3045-3045i (Supp. V 1975). Congress added Title VII in 1972.

⁸⁷ These programs provide many elderly persons with at least one hot, nutritious meal five days a week at accessible sites. *Id.* § 3045e(a)(1). The meals may also be home-delivered. *Id.* § 3045e(a)(3). See generally DEVS. IN AGING 1975-1976, *supra* note 59, pt. 1, at 154-55; *id.*, pt. 2, at 50-52 (AoA report).

⁸⁸ 45 C.F.R. § 909.42(a) (1976) (emphasis added). See 42 U.S.C. § 3045e(a)(4) (Supp. V 1975).

⁸⁹ 45 C.F.R. § 909.35(a)(4) (1976).

⁹⁰ 42 U.S.C. § 3045e(a)(6) (Supp. V 1975); 45 C.F.R. § 909.42(a)(1) (1976).

3. Supplemental Security Income

Outreach in the new Supplemental Security Income (SSI)⁹¹ program is now a live issue in Congress.⁹² SSI, a federal program administered by the Social Security Administration (SSA), provides cash assistance to the elderly, blind, and disabled. In January 1974 it replaced state-administered programs for these groups.⁹³ However, because planners envisioned that SSI would serve many needy persons not covered by the old state programs,⁹⁴ they anticipated the need for outreach to solicit the participation of those persons.

The SSI statute contains no reference to outreach. Nevertheless, SSA has spent millions of dollars and conducted several programs since 1973 to draw potentially eligible persons into the program.⁹⁵ In 1974, it engineered "SSI-Alert,"⁹⁶ a large-scale outreach project in which SSA collaborated with AoA and local consortia of advisers under the general management of the American Red Cross. Over 50,000 volunteers participated in the varied and

⁹¹ 42 U.S.C. §§ 1381-1385 (Supp. V 1975).

⁹² See, e.g., *Oversight of the Supplemental Security Income Program: Hearings Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 94th Cong., 2d Sess. 23-26, 33, 57-58, 75, 100-01, 131-53 (1976) [hereinafter cited as *SSI Oversight Hearings*]; HOUSE COMM. ON WAYS AND MEANS, SUPPLEMENTAL SECURITY INCOME AMENDMENTS OF 1976, H.R. REP. NO. 94-1201, 94th Cong., 2d Sess. 5-6, 13, 17, 37-38 (1976) [hereinafter cited as *SSI 1976 AMENDMENTS*].

⁹³ The old titles remain in effect for Puerto Rico, Guam, and the Virgin Islands. See Act of Oct. 30, 1972, Pub. L. No. 92-603, Title III, § 303(a), (b), 86 Stat. 1484.

⁹⁴ See *SSI Oversight Hearings*, *supra* note 92, at 142 (Study Group report).

⁹⁵ For the Study Group's survey of SSI outreach from 1973 to 1976, see *id.* at 142-44, 151-53. Their summary of outreach expenses appears in *id.* at 144. See generally *Administration of the Supplemental Security Income Program: Hearings Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 94th Cong., 1st Sess. 15-19 (1975) (statement of Robert Bynum, Assoc. Comm'r for SSA Program Operations) [hereinafter cited as *Administration of SSI*]; *Future Directions in Social Security: Hearings Before the Senate Special Comm. on Aging*, 93d Cong., 2d Sess., pt. 7, at 549-55 (1974) (statement of SSA Comm'r Cardwell) [hereinafter cited as *Future Directions*].

⁹⁶ See *Administration of SSI*, *supra* note 95, at 15; *Departments of Labor and Health, Education, and Welfare Appropriations for 1977: Hearings Before a Subcomm. of the House Comm. on Appropriations*, 94th Cong., 2d Sess., pt. 6, at 305 (1976) (testimony of SSA Comm'r Cardwell) [hereinafter cited as *1977 Appropriations Hearings*]; *Development of the Supplemental Security Income Program: Hearings Before the Subcomm. on Public Assistance of the House Comm. on Ways and Means*, 94th Cong., 1st Sess. 378 (1975) (appendix to statement of Martin Hochbaum, Am. Jewish Cong.: Letter from AoA Comm'r Arthur S. Flemming to Will Maslow, Am. Jewish Cong. (Dec. 31, 1973)) [hereinafter cited as *1975 Pub. Assistance Hearings*]; *Future Directions*, *supra* note 95, at 549, 551-52 (statements of SSA Comm'r Cardwell and AoA Comm'r Arthur S. Flemming); *SSI Oversight Hearings*, *supra* note 92, at 143, 151-52 (Study Group report); DEVS. IN AGING 1973-1974, *supra* note 77, at 21.

often ingenious outreach activities carried out under SSI-Alert—canvassing neighborhoods, conducting interviews, finding local eligible persons and convincing them to sign up for SSI.⁹⁷ Then, in its “leads program,” SSA combed the Social Security rolls to identify persons whose payments were low enough for SSI eligibility.⁹⁸ The search identified about 5.2 million individuals, who were given special notice of their possible eligibility for SSI.⁹⁹ Since its initial spurt of outreach activity, SSA has publicized through the news media¹⁰⁰ and conducted pilot projects to experiment with new means of disseminating information about SSI.¹⁰¹ It has enlisted the cooperation of federal agencies, especially AoA,¹⁰² state and local welfare agencies, local private organizations, and welfare rights groups to assist in its outreach efforts.¹⁰³

Despite these efforts, participation in SSI has been disappointing. From 1974 to the present, Congress and a procession of witnesses testifying before its committees have expressed concern over the gap between those estimated to be eligible for SSI¹⁰⁴ and those on the rolls—a gap of at least two million persons.¹⁰⁵ Some par-

⁹⁷ *Administration of SSI*, *supra* note 95, at 15 (statement of SSA Assoc. Comm'r Bynum).

⁹⁸ *See id.*; *Future Directions*, *supra* note 95, at 549; 1977 *Appropriations Hearings*, *supra* note 96, pt. 6, at 305; *SSI Oversight Hearings*, *supra* note 92, at 218-32 (Study Group report).

⁹⁹ *Administration of SSI*, *supra* note 95, at 15.

¹⁰⁰ *See SSI Oversight Hearings*, *supra* note 92, at 26 (testimony of SSA Comm'r Cardwell), 143-44, 152-53 (Study Group report).

¹⁰¹ *Administration of SSI*, *supra* note 95, at 15; *SSI Oversight Hearings*, *supra* note 92, at 143, 152-53 (Study Group report).

¹⁰² *See* DEVS. IN AGING 1975-1976, *supra* note 59, pt. 2, at 76.

¹⁰³ *Administration of SSI*, *supra* note 95, at 19 (testimony of SSA Assoc. Comm'r Bynum); 1977 *Appropriations Hearings*, *supra* note 96, pt. 6, at 327 (testimony of SSA Comm'r Cardwell). For 1976, SSA planned a two-phase outreach campaign, including an all-media publicity program and an integration of media use, contacts with outside organizations, and training. *SSI Oversight Hearings*, *supra* note 92, at 144.

¹⁰⁴ SSA originally estimated that seven million persons might be eligible for SSI. 1977 *Appropriations Hearings*, *supra* note 96, at 322 (testimony of SSA Comm'r Cardwell); *SSI Oversight Hearings*, *supra* note 92, at 137-38 (Study Group report). Realizing that some eligible persons would choose not to participate, SSA discounted the estimate by 10%, leaving a goal of 6.3 million from the SSI “universe.” *SSI Oversight Hearings*, *supra* note 92, at 138 (Study Group report). “Universe” refers to the number of people who would be eligible for a program if they chose to exercise their right. 1977 *Appropriations Hearings*, *supra* note 96, at 305 (testimony of SSA Comm'r Cardwell).

¹⁰⁵ *See, e.g.*, 1975 *Pub. Assistance Hearings*, *supra* note 96, at 77 (statement of Mass. Lt. Gov. Thomas P. O'Neill), 378 (letter from AoA Comm'r Arthur S. Flemming to Will Maslow, Am. Jewish Congress (Dec. 31, 1973)), 737 (statement of Senator Taft); DEVS. IN AGING 1975-1976, *supra* note 59, pt. 1, at 52. SSA, put on the defensive by its own estimate, takes the position that its original estimate was too high. 1977 *Appropriations Hearings*, *supra* note 96, at 297 (testimony of SSA Comm'r Cardwell); *SSI Oversight Hearings*, *supra* note 92, at 33, 57-58 (testimony & statement of SSA Comm'r Cardwell). The SSI Study

ticipants in the debate attribute the low participation rates to SSA's mismanagement of outreach. They complain of the lack of national news publicity at the outset of the program, a time when people were naturally hesitant about SSI.¹⁰⁶ One critical study of SSI's early operations noted that volunteers and staff were uninformed and unprepared to cope with the onslaught of initial claimants.¹⁰⁷ Criticism of recent SSI outreach activity has focused on understaffing and inadequate training of personnel,¹⁰⁸ the lingering stigma attached to the program,¹⁰⁹ and the lack of coordination with other assistance programs,¹¹⁰ and has emphasized the continuing need for publicity.¹¹¹ Others have criticized SSA for delegating outreach responsibilities to local offices.¹¹² If SSA has in fact largely aban-

Group, an outside body formed in 1975 to review and criticize SSI's early operations, concurred with SSA on this point. In its final report it recommended that the original projections of the SSI population be discarded. See *SSI Oversight Hearings*, *supra* note 92, at 137-38 (Study Group report).

However, the difficulty of obtaining an official revised estimate (see 1977 *Appropriations Hearings*, *supra* note 96, pt. 6, at 297, 305, 322, 326 (testimony of SSA Comm'r Cardwell); *SSI Oversight Hearings*, *supra* note 92, at 137-41 (Study Group report)) has kept the issue of the "lost eligibles" prominently before Congress. Hearings continue to explore why participation rates have been so low and whether a specific outreach amendment would help. See, e.g., *SSI Oversight Hearings*, *supra* note 92, at 23-26, 57-58 (testimony of SSA Comm'r Cardwell). See also SSI 1976 AMENDMENTS, *supra* note 92, at 5-6, 17, 37-38 (proposed outreach amendment).

¹⁰⁶ See, e.g., *Future Directions*, *supra* note 95, pt. 6, at 516 (statement of Scott Hancock, former SSI-Alert Regional Director).

¹⁰⁷ *SSI Oversight Hearings*, *supra* note 92, at 145 (Study Group report). See also *Administration of SSI*, *supra* note 95, at 4 (opening statement of Rep. Gibbons). One critic complained that the information gathered by SSI-Alert was sent to district Social Security offices which were already overworked and confused in the first months of the program's operation. 1975 *Pub. Assistance Hearings*, *supra* note 96, at 470 (testimony of Rep. Burton).

¹⁰⁸ See, e.g., 1975 *Pub. Assistance Hearings*, *supra* note 96, at 94-95 (statement of Wilbur J. Schmidt, Chairman, Nat'l Council of State Pub. Welfare Adm'rs); *id.* at 278 (statement of Mich. State Rep. Mastin); *SSI Oversight Hearings*, *supra* note 92, at 95 (Study Group report); DEVS. IN AGING 1975-1976, *supra* note 59, pt. 1, at 74.

¹⁰⁹ See, e.g., *Future Directions*, *supra* note 95, pt. 7, at 576, 579 (testimony of William Hutton, Executive Director, Nat'l Council of Senior Citizens); 1975 *Pub. Assistance Hearings*, *supra* note 96, at 643 (statement of Janet Bruin, Community Org. Director, Philadelphia Corp. for Aging).

¹¹⁰ See, e.g., 1975 *Pub. Assistance Hearings*, *supra* note 96, at 94-95 (statement of Wilbur J. Schmidt, Chairman, Nat'l Council of State Pub. Welfare Adm'rs); *id.* at 618 (statement of Fernande R. Vandenberg Duffly, Legislative Coordinator, SSI Advocacy Center); *SSI Oversight Hearings*, *supra* note 92, at 132 (Study Group report).

¹¹¹ The SSI Study Group recommended a "stepped-up outreach information program" and encouraged SSA to follow up on outreach efforts and monitor their effectiveness. *SSI Oversight Hearings*, *supra* note 92, at 144. They particularly recommended the inclusion of a question on the application form asking how the applicant had learned about SSI. *Id.* at 141, 144.

¹¹² In June 1975, a legal services representative reported to Congress that "[d]irect outreach efforts are out, and [their] functions have been delegated to local Social Security

done outreach to local offices,¹¹³ the inertia of local administrators may have provided Congress with good reason for taking more direct control. Wilbur J. Schmidt, Chairman of the National Council of State Public Welfare Administrators, reported in 1975 that outreach in the states has been half-hearted: "[A] real red-hot, intensive effort to go out and find them all, you don't know anybody who is doing this."¹¹⁴

Congressional SSI hearings have provided an excellent forum for airing the whole matter of outreach in public assistance programs. Regardless of the conclusions Congress reaches, it has generated a small library of testimony that raises searching questions about legislated outreach and underscores the urgent need for answers.

II

ISSUES

A. *The Scope of Outreach*

A discussion of the scope of outreach involves three types of questions: definitional (how much is included in the word "outreach?"); interpretive (how much is required by a given outreach mandate?); and normative (how much should be required?).¹¹⁵ Despite the vogueish use of the word, "[a] basic point of disagreement on outreach is what the term means."¹¹⁶ The semantic question

offices who [sic] have insufficient staff to even process applications with promptness." 1975 *Pub. Assistance Hearings*, *supra* note 96, at 663 (testimony of Jonathan M. Stein, Community Legal Servs., Inc.).

¹¹³ See *SSI Oversight Hearings*, *supra* note 92, at 25 (testimony of SSA Assoc. Comm'r Bynum).

¹¹⁴ 1975 *Pub. Assistance Hearings*, *supra* note 96, at 124 (testimony of Wilbur J. Schmidt, Chairman, Nat'l Council of Pub. Welfare Adm'rs).

¹¹⁵ The normative question might be further broken down into two questions: "How much should be done?" and "How much should the law require to be done?" Consider a Congress that believes certain outreach activities should be undertaken to implement assistance programs. It amends Program A to require the states to undertake these activities as a condition to receipt of federal funding. Program B, however, is federally administered, and the federal agency already carries out these activities. In that case, Congress might find it unnecessary to anchor the program's outreach in law. Precisely this pattern may help explain the absence of an outreach mandate in SSI. See notes 95-103 and accompanying text *supra*.

¹¹⁶ *FOOD STAMP 1976 REP.*, *supra* note 5, at 333. For example, although the key outreach provision in the Food Stamp Act does not contain the word "outreach," Judge Lord in *Bennett* used the word to include both the "inform" and the "insure" components of the mandate. See 386 F. Supp. at 1065. In *Tyson*, however, Judge Blumenfeld concluded that the word as coined by FNS encompassed informational activities only; he thought the term

dissolves, however, upon careful definition of terms. The remaining questions raise the crucial and more interesting issues—one of interpretation, the other of pure policy.

A court or administrator confronted with any outreach directive faces the interpretive question. The *Bennett* and *Tyson* courts answered this question for the food stamp program by grounding their interpretations in statutory language and legislative history.¹¹⁷ Administrative regulations often supply additional detail. To the extent that these sources fail to delimit the reach of the mandate, however, administrators and courts will naturally import policy considerations into their interpretations. The court in *Tyson*, for example, could hardly have extracted the requirement of a full-time outreach director from the simple words “inform” and “insure”¹¹⁸ without considering how much outreach those words *should* require. So, although answering the interpretive question requires deference to the perimeters set by the language of a given mandate,¹¹⁹ it will often entail resort to the normative question. But the pure policy question confronts administrators of programs without outreach provisions and legislators designing or revising outreach mandates. Recent deliberations in Congress over the need for outreach in SSI programs illustrate the effort to answer this normative question.¹²⁰

Solutions to either the interpretive or the normative question

“full participation” better expressed the broad concept he was espousing in that case. See 390 F. Supp. at 552 n.4; notes 44-47 and accompanying text *supra*. Today the food stamp regulations explicitly include in the term “outreach” both informational activity and efforts to insure participation through provision of “reasonable and convenient access.” 7 C.F.R. § 271.1(k) (1977).

The regulations for Title 111 of the Older Americans Act also illustrate the confusion between outreach as solely informational activity and outreach as something more. These regulations classify outreach with information and referral as an example of a service to “assist older persons to *become aware of the social services available*”—as distinguished from those services (transportation, escort) that “assist [older persons] in *having access to*” those services. 45 C.F.R. § 903.79(b) (1976) (emphasis added). Yet elsewhere the same regulations speak of outreach services as “including search and find activities, which seek out and identify hard-to-reach individuals and *assist them in gaining access to needed services.*” *Id.* § 903.2(g)(5)(i) (emphasis added).

¹¹⁷ *Tyson v. Norton*, 390 F. Supp. 545, 552 (D. Conn.), *aff’d in pertinent part sub nom. Tyson v. Maher*, 523 F.2d 972 (2d Cir. 1975); *Bennett v. Butz*, 386 F. Supp. 1059, 1064-65 (D. Minn. 1974).

¹¹⁸ See 390 F. Supp. at 574.

¹¹⁹ This will be especially true for more specific directives. A mandate to inform the public about a program, for example, cannot reasonably be interpreted to require transportation services for applicants—even if the interpreter believes such transportation services are a desirable form of outreach.

¹²⁰ See notes 105-14 and accompanying text *supra*.

cover a spectrum from "disseminating information" through "encouraging participation" to "facilitating access to participation."¹²¹ Subsumed under these general categories are many conventional and creative activities which have been suggested, tried, or required in the name of outreach.

1. *Outreach as Informing*

At a minimum, outreach requires distribution of information.¹²² But controversial questions lurk behind this seemingly simple starting point. For example, should administrators ensure that information is merely available somewhere, that it is readily accessible, or that it is actively disseminated? In its original regulations implementing the 1971 food stamp outreach amendment, FNS indicated that "any communicative effort" would suffice.¹²³ HEW regulations for programs under the Social Security Act require only that certain written material be made available in every district Social Security office and that specified information be provided to applicants.¹²⁴ But the clamor for more effective outreach signifies a movement away from the passive era of pamphlets in an office rack or answers on request. Some agencies have taken the initiative with innovative efforts to actively disseminate publicity about their programs.¹²⁵ Where administrators demonstrate a lack of imagina-

¹²¹ For a more detailed breakdown of possible categories, see S. KAMERMAN & A. KAHN, *SOCIAL SERVICES IN THE UNITED STATES* 435-39 (1976) [hereinafter cited as KAMERMAN & KAHN].

¹²² The preliminary problem of choosing the geographic areas in which a program will operate might be considered a threshold outreach issue, especially when the law requires a particular direction or degree of program expansion. The Food Stamp Act, for example, now requires participating states to make the program available in every political subdivision of the state. 7 U.S.C. § 2019(e) (Supp. V 1975). Similarly, a state must plan to extend its School Lunch Program to every school. 7 C.F.R. § 210.4a(b)(5) (1977). A state choosing sites for Title VII meals for the elderly must target certain areas and populations in accordance with federally designated priorities. 45 C.F.R. §§ 909.22, .23 (1976). In many cases, potentially eligible plaintiffs have attacked a state's failure to extend an assistance program into their areas. See, e.g., *Aho v. Clark*, [1977] Pov. L. REP. (CCH) ¶ 24,014 (D. Hawaii Jan. 10, 1977) (consent agreement) (School Breakfast Program); *Saginaw Hunger Task Force, Inc. v. Saginaw Bd. of Educ.*, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) ¶ 22,451 (E.D. Mich. 1975) (consent decree) (School Lunch Program); *Sherman v. Costanzo*, [1972-1974 Transfer Binder] Pov. L. REP. (CCH) ¶ 15,902 (E.D. Pa. 1972) (consent decree) (School Lunch Program).

¹²³ 36 Fed. Reg. 14,103 (1971).

¹²⁴ 45 C.F.R. § 206.10(a)(2)(i) (1976). HEW now proposes to make clear that Social Security officials must supply this information to anyone who inquires about the program. See note 71 *supra*.

¹²⁵ See, e.g., *SSI Oversight Hearings*, *supra* note 92, at 141-44, 151-53 (Study Group report).

tion or enthusiasm for outreach, the law may step in to suggest, or even to require, particular activities.¹²⁶ The range of possibilities is broad.

Effective outreach certainly requires the availability of explanatory publications.¹²⁷ But these should be actively disseminated—for example, via direct mailings, flyers accompanying utility bills or church bulletins, brochures sent home with school pupils, information booths at shopping centers or polling places, or even distribution to persons waiting in line at gas stations.¹²⁸

Use of the media can be most effective. Recognizing this, the court in *Tyson* ordered a “full scale and continuing media campaign,”¹²⁹ and particularly suggested contacts with radio and television stations that orient their broadcasting toward certain ethnic populations.¹³⁰ After conducting pilot outreach projects for SSI in 1975, SSA concluded that “[u]se of the mass media will reach most of the intended audience. Continuous use of the media will reach almost all of the intended audience in time.”¹³¹

Administrators should also solicit the help of private organizations for disseminating information.¹³² Legal aid clinics and various advocacy groups, for example, are in an excellent position to assist with outreach.¹³³ Private groups such as churches and synagogues, unions, senior citizens' groups, retired workers' associations, veterans' groups, and lodges and fraternal orders can be especially

¹²⁶ See, e.g., *Thomas v. Kramer*, 10 CLEARINGHOUSE REV. 802 (S.D.N.Y. Dec. 1, 1976) (consent decree); *Westside Mothers Welfare Rights Org. v. Butz*, [1977] Pov. L. REP. (CCH) ¶ 22,975 (W.D. Mich. June 15, 1976) (stip. & order); *Tyson v. Norton*, 390 F. Supp. 545 (D. Conn.), *aff'd in pertinent part sub nom. Tyson v. Maher*, 523 F.2d 972 (2d Cir. 1975); *Greater Cleveland Welfare Rights Org. v. Butz*, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) ¶ 20,444 (S.D. Ohio 1975) (stip. & order); 7 U.S.C. § 2019(e)(5) (Supp. V 1975).

¹²⁷ Cf. *Greater Cleveland Welfare Rights Org. v. Butz*, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) ¶ 20,444 (S.D. Ohio 1975) (stip. & order) (availability of certain written information required).

¹²⁸ See *Future Directions*, *supra* note 95, pt. 7, at 552 (statement of AoA Comm'r Arthur S. Flemming).

¹²⁹ 390 F. Supp. at 574.

¹³⁰ *Id.* at 556.

¹³¹ *SSI Oversight Hearings*, *supra* note 92, at 153 (Study Group report). Those experiments showed that the “most effective media were television, newspapers and radio (in that order).” *Id.*

¹³² See *id.* at 25 (testimony of SSA Assoc. Comm'r Bynum). SSA designed its massive SSI-Alert program around cores of private organizations, which planned, supervised, and operated local SSI outreach. See notes 96-103 and accompanying text *supra*. For a general discussion of the value of third-party “intercessors” for effecting outreach, see STEINER, *supra* note 7, at 322-24.

¹³³ See generally *SSI Oversight Hearings*, *supra* note 92, at 126-31 (Study Group report).

helpful in reaching their own members. Use of private organizations is so fundamental to informational outreach that it is sometimes specifically required by law.¹³⁴

Statutes also acknowledge that other public agencies can provide a fertile resource for effecting successful outreach.¹³⁵ The food stamp outreach mandate, for example, specifically requires states to make "use of services provided by other federally funded agencies and organizations."¹³⁶ The Older Americans Act, with its provision for a National Clearing House¹³⁷ and plentiful information and referral sources,¹³⁸ also taps this resource. The long-range goal of these outreach efforts should be to form a network of government agencies that provide cross-information on all available public assistance programs.

Beyond these classic resources, informational outreach may take many creative forms: posters, telephone and door-to-door canvassing, exhibits, lectures, and workshops. At least two courts have advocated the publication of a toll-free telephone number that interested persons can call for information about a program.¹³⁹ Even requiring that local offices and program sites be "well marked and clearly identifiable"¹⁴⁰ as public service facilities serves an outreach function. In choosing among the array of methods available for disseminating information, administrators, legislators, and judges should bear in mind that they are also determining the "reach" of the program. Administrators in particular should continually experiment and reevaluate to determine the relative effec-

¹³⁴ The food stamp regulations, for example, call for state agencies to "initiate and monitor effective, comprehensive ongoing efforts performed cooperatively" with a long list of suggested groups. 7 C.F.R. § 271.1(k) (1977). In *Greater Cleveland Welfare Rights Org. v. Butz*, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) ¶ 20,444 (S.D. Ohio 1975) (stip. & order), the court required the state to disseminate food stamp information to a long list of named organizations. See also *Tyson v. Norton*, 390 F. Supp. 545, 574 (D. Conn.), *aff'd in pertinent part sub nom.* *Tyson v. Maher*, 523 F.2d 972 (2d Cir. 1975); SSI 1976 AMENDMENTS, *supra* note 92, at 37-38 (proposed SSI amendment authorizing use of private organizations for outreach).

¹³⁵ See notes 102-03 and accompanying text *supra*.

¹³⁶ 7 U.S.C. § 2019(e)(5) (Supp. V 1975).

¹³⁷ See notes 76-78 and accompanying text *supra*.

¹³⁸ See notes 84-90 and accompanying text *supra*.

¹³⁹ See *Tyson v. Norton*, 390 F. Supp. 545, 574 (D. Conn.), *aff'd in pertinent part sub nom.* *Tyson v. Maher*, 523 F.2d 972 (2d Cir. 1975); *Greater Cleveland Welfare Rights Org. v. Butz*, [1974-1976 Transfer Binder] Pov. L. REV. (CCH) ¶ 20,444 (S.D. Ohio 1975) (stip. & order).

¹⁴⁰ This is the language used in the Social Security regulations for state agency offices. 45 C.F.R. § 205.170(a) (1976).

tiveness of different outreach activities.¹⁴¹

A second unsettled question complicates the matter of outreach as dissemination of information: outreach to whom? Some provisions could be read to imply that agencies should aim their outreach efforts at the general public.¹⁴² Others speak of reaching out to the potentially eligible.¹⁴³ Still others single out specific "target groups"—the elderly,¹⁴⁴ the disabled,¹⁴⁵ rural residents,¹⁴⁶ ethnic groups,¹⁴⁷ migrants,¹⁴⁸ the poor¹⁴⁹—as the proper focus of outreach activities.¹⁵⁰

Should administrators direct their publicity to the general public or aim at subsets of the total population where the "potentially eligible" are likely to be found? These are mostly distinctions of degree. All outreach—even that directed toward the "general public"—implies some audience, thus favoring one set of persons over another. Television spots reach persons who watch television; pamphlets in an office reach those who come in; posters reach persons who pass through the areas where they are posted. Choosing specific outreach activities inevitably risks targeting some persons to the exclusion of others. Such choices should stem from informed consideration of the classes of persons most likely to be eligible for a program and the limits of administrative resources. In

¹⁴¹ Cf. DEVS. IN AGING 1975-1976, *supra* note 59, pt. 2, at 18-19 (Report of Federal Council on the Aging) (recommending that AoA conduct controlled experiments to test relative effectiveness of outreach methods).

¹⁴² E.g., 45 C.F.R. § 903.50(d)(1) (1976) (Title III, Older Americans Act).

¹⁴³ E.g., 7 U.S.C. § 2019(e)(5) (Supp. V 1975) (Food Stamp Act).

¹⁴⁴ E.g., 7 C.F.R. § 271.1(k) (1977) (Food Stamp regulations).

¹⁴⁵ E.g., *id.*

¹⁴⁶ E.g., *id.*

¹⁴⁷ E.g., *id.*

¹⁴⁸ E.g., *Thomas v. Kramer*, 10 CLEARINGHOUSE REV. 802 (S.D.N.Y. Dec. 1, 1976) (consent decree); 7 C.F.R. § 271.1(k) (1977) (Food Stamp regulations).

¹⁴⁹ E.g., 45 C.F.R. §§ 909.22, .23 (1976) (Title VII, Older Americans Act regulations). Because elderly persons are eligible for Title VII meals without regard to financial need, the targeting of particular areas for meal sites is especially important to assure that the program reaches the most needy.

¹⁵⁰ The targeting of other groups has also been suggested. See, e.g., *Administration of SSI*, *supra* note 95, at 441 (statement of Douglas Watson, Director of Serv. Research, Deafness Research & Training Center, N.Y.U.) (recommending that SSI target deaf); *id.* at 720-21 (statement of Richard Hamilton, Executive Director, Nat'l Caucus on the Black Aged) (recommending that SSI target elderly, especially elderly blacks in rural South); *id.* at 252 (statement of Rep. Fraser) (recommending that SSI target blind and disabled children, and persons who stand to gain only a few dollars from the program); DEVS. IN AGING 1975-1976, *supra* note 59, pt. 1, at 183 (recommending outreach to isolated elderly members of minority groups).

the absence of more specific directives, administrators and judges selecting either the mode of publicity or appropriate target groups might borrow from the due process standard of notice to interested parties of the commencement of an action¹⁵¹ and undertake to provide notice reasonably calculated to reach eligible persons.¹⁵²

A third informational outreach issue involves the required content of the information promulgated. The Food Stamp Act requires only information on the "availability and benefits" of the program;¹⁵³ the House's proposed Food Stamp Act of 1976¹⁵⁴ would have expanded that requirement to include "availability, eligibility requirements, rules and benefits."¹⁵⁵ In addition to "availability" and "benefits," Tyson required food stamp officials to publicize changes in the program, application procedures, and the location of certification offices.¹⁵⁶ Some advocates recommend publicizing the hours of local food stamp offices and the verification documents needed to establish eligibility.¹⁵⁷ Publicity might also include

¹⁵¹ See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

¹⁵² One type of target group warrants special mention. Occasionally outreach is directed not at the ultimate recipients of assistance, but at necessary intermediates. Early food stamp outreach, for example, solicited the participation of grocers. See *FOOD STAMP 1976 REP.*, *supra* note 5, at 328. Outreach in medical assistance programs may seek to recruit hospitals and clinics. See, e.g., 42 U.S.C. § 300s-5 (Supp. V 1975). See *Woodruff v. Lavine*, 399 F. Supp. 1008, 1010 (S.D.N.Y. 1975) (citing interpretation of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program regulation as requiring outreach to medical providers). Cf. *Schneider & Wing, The National Health Planning and Resources Development Act of 1974: Implications for the Poor*, 9 *CLEARINGHOUSE REV.* 683, 689 (Feb. 1976) (HEW's failure to develop outreach to outpatient medical facilities in poverty areas criticized). State plans for the School Breakfast program must provide for informing schools about the program. 42 U.S.C.A. § 1773(g) (1977 Supp.). To receive Title VII funds for nutrition programs for the elderly, a state must promulgate information about the program "in a manner designed to reach potential applicant agencies for nutrition projects." 45 C.F.R. § 909.27 (1976).

¹⁵³ 7 U.S.C. § 2019(e)(5) (Supp. V 1975).

¹⁵⁴ Food Stamp Act of 1976, H.R. 13613, 94th Cong., 2d Sess., reprinted in *FOOD STAMP 1976 REP.*, *supra* note 5, at 1. See notes 58-62 and accompanying text *supra*.

¹⁵⁵ Food Stamp Act of 1976, H.R. 13613, 94th Cong., 2d Sess., § 10(e)(1)(A), reprinted in *FOOD STAMP 1976 REP.*, *supra* note 5, at 9 (emphasis added). The Committee felt that the addition of this language was especially necessary since the proposed Act would have drastically changed "eligibility requirements" and "rules." *Id.* at 334. Cf. *REP. ON NUTRITION*, *supra* note 14, at 49-52 (ignorance of eligibility requirements causes nonparticipation in food stamp program).

¹⁵⁶ 390 F. Supp. at 574. Tyson also held that food stamp officials must tell interested persons of their right to apply immediately, and encourage them to do so. *Id.* See note 116 *supra*.

¹⁵⁷ See *FOOD STAMP 1976 REP.*, *supra* note 5, at 333.

information about ancillary services,¹⁵⁸ means of procuring benefits,¹⁵⁹ and the "objectives and results" of the program.¹⁶⁰ Administrators should be required to publicize full and specific information, limited only by the need to accommodate the medium of dissemination and the understanding of those addressed.¹⁶¹

Whatever the substance of the message, publicity will not truly inform unless it speaks in appropriate language. Perhaps the need for clear, communicative form inheres in the word "inform"; perhaps it is taken for granted. In either case, the law rarely specifies that a program's publicity must "clearly and specifically describe"¹⁶² the program in "simple, understandable terms."¹⁶³ The related necessity of furnishing information in the language of the persons addressed has received more attention. In recent years, courts and legislators have compelled administrators to respond to the need for multilingual printed material and personnel.¹⁶⁴

¹⁵⁸ See, e.g., 1975 Pub. Assistance Hearings, *supra* note 96, at 547 (statement of Jean Janover, Citizens' Comm. on Aging of the Community Council of Greater New York) (advocating informing SSI recipients of availability of housekeeping, foster care, counseling, and institutional placement). See also *id.* at 378 (statement of Martin Hochbaum, Am. Jewish Congress) (suggesting that SSI recipients be informed of transportation discounts, recreation services, nutrition programs, etc.—services not part of SSI program).

¹⁵⁹ See, e.g., 45 C.F.R. § 222.28 (1976). See also SSI 1976 AMENDMENTS, *supra* note 92, at 37 (proposed SSI amendment).

¹⁶⁰ See, e.g., 45 C.F.R. § 909.27(a) (1976). Social Security regulations offer a checklist of information that officials must provide—but only to applicants. See note 124 and accompanying text *supra*.

The dissemination of some of this information is not outreach, and may even oppose outreach goals. Publicizing eligibility requirements, for example, discourages applications by those who do not believe they meet the requirements. This self-screening aids administrative efficiency by reducing the number of *ineligible* applicants. If the information is misleading or incomplete, however, *eligible* persons may rule themselves out. See REP. ON NUTRITION, *supra* note 14, at 50-51. And if eligibility requirements are complex and confusing (as they are apt to be), the layman's paraphrase contained in program publicity may well be misleading or incomplete. Clearly a balance must be struck between the need for outreach and administrative efficiency. Cf. 1975 Pub. Assistance Hearings, *supra* note 96, at 337-38, 343 (statement and testimony of Anne Silverstein, Staff Attorney, Nat'l Senior Citizens Law Center) (concern expressed over prescreening by outreach canvassers).

¹⁶¹ Perhaps the best informational mandate is found in the regulations for the Older Americans Act: "The State plan shall provide for a *continuing program* of public information *specifically designed* to assure that information about the programs and activities . . . are [sic] *effectively* and *appropriately* promulgated throughout the State." 45 C.F.R. § 903.50(d)(1) (1976) (emphasis added).

¹⁶² *Id.* § 205.146(c)(1)(i).

¹⁶³ *Id.* § 206.10(a)(2)(i).

¹⁶⁴ See, e.g., *Asociacion Mixta Progersista v. HEW*, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) ¶ 20,335 (N.D. Cal. 1972) (stip. & settlement) (state agreed to move toward

Despite a widespread feeling that informational outreach is fundamental, surprisingly little attention has been paid to its content. Yet one's conception of the proper content of outreach publicity determines more than the facts to include. Clear thinking on the matter would bring a cluster of important issues into sharper focus. For example, what information should a potential recipient have the right to receive? At what point should the government's responsibility to inform end and the potential recipient's responsibility to inquire begin? Should publicity impassively list the facts or should it impassionately solicit participation?¹⁶⁵ Individual conceptions of the proper content of outreach information also influence attitudes toward stepping up outreach efforts.¹⁶⁶

There is a continuing need for outreach publicity directed at overcoming not only ignorance and confusion but also other powerful intangible inhibitors—shame, embarrassment, and fear. Many eligible persons choose not to receive public assistance because of “the paralyzing [*sic*] fear of being stigmatized.”¹⁶⁷ Administrators charged with encouraging participation should make efforts to overcome this perception. Eliminating stigmas will be a long-term project, but program officials could begin by avoiding degrading characterizations of the program and according all inquirers and

implementing bilingual services); 45 C.F.R. § 222.28 (1976) (Social Security Act programs); *id.* § 903.2(g)(2)(ii) (OAA, Title III); FOOD STAMP 1976 REP., *supra* note 5, at 335 (extensive multilingual services required under House's proposed new Act).

¹⁶⁵ Outreach for legal services presents a nice ethical question: To what extent does it run afoul of professional bans on advertising of legal services? See ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101(B). Cf. *Bates v. State Bar*, 97 S. Ct. 2691 (1977) (advertising by “legal clinic” attorneys within scope of First Amendment; could serve to reduce prices and aid new attorneys in entering market). See generally Padnos, *Legal Aid and Legal Ethics*, 5 GA. ST. B.J. 347 (1969); Comment, *Bar Restrictions on Dissemination of Information About Legal Services*, 22 U.C.L.A. L. REV. 483 (1974); Note, *Advertising, Solicitation and the Profession's Duty to Make Legal Counsel Available*, 81 YALE L.J. 1181 (1972).

¹⁶⁶ See FOOD STAMP 1976 REP., *supra* note 5, at 333. Those who conceive of outreach as the mere announcement of a program's availability would likely consider that that information is already known about major assistance programs, and would therefore more likely oppose expanding outreach efforts. See, e.g., 40 Fed. Reg. 16,069 (1975) (opposition to new definition of food stamp outreach based on belief that low income families already aware of program). But others, with broader conceptions of outreach information, argue that incomplete or inaccurate information inhibits participation in many programs, and that therefore more outreach is needed. See FOOD STAMP 1976 REP., *supra* note 5, at 333. Even persons who have heard of a program may not realize they are eligible, or know how to obtain the benefits.

¹⁶⁷ *Future Directions*, *supra* note 95, pt. 13, at 1192 (progress report supplement by Dr. Dennis L. Stone, Medical Director, North of Market Senior Health Serv., San Francisco). This concern was voiced repeatedly in recent congressional hearings on SSI. See note 95 *supra*.

participants proper courtesy and respect.¹⁶⁸ The help of private organizations that have the trust of their members would go a long way toward reassuring the hesitant. So, too, would utilizing target group members as outreach workers.¹⁶⁹

Encouraging participation straddles the distinction between outreach as informing and outreach as providing access to a program. Even a simple directive to publicize implies encouragement, because the obvious purpose is to draw eligible persons into the program.¹⁷⁰ And directives to encourage, facilitate, or insure participation edge into requirements of active encouragement, which might with useful generality be called "facilitating access."

2. *Outreach as Facilitating Access*

"Facilitating access" has many dimensions. For example, it includes both providing the initial opportunity to apply for benefits and enabling participants to get to certain places (food stamp offices, meal sites, recertification centers) to receive those benefits. It includes not only making participation possible, but also making it easier. The phrase encompasses "making available," "clearing the way," and even "bringing in."

Facilitating access to a program begins with establishing the location at which to apply for and receive assistance. There should be sufficient sites¹⁷¹ located at geographically convenient places,¹⁷² and office hours should reasonably accommodate the demands of recipients' schedules. Inside, there should be adequate personnel to minimize delay. Long distances, long lines, and long waits are especially hard on the elderly and disabled—often the very persons the program should reach—and may deter them from partici-

¹⁶⁸ Cf. 1975 *Pub. Assistance Hearings*, *supra* note 96, at 643 (statement of Janet Bruin, Community Org. Director, Philadelphia Corp. for Aging) (complaining of characterization of SSI as welfare rather than as right); *id.* at 720 (statement of Richard Hamilton, Executive Director, Nat'l Caucus on the Black Aged) (expressing fear of "invidious labeling of SSI, thereby thwarting future efforts to aid elderly poor").

¹⁶⁹ See HUNGER, USA, *supra* note 7, at 67; REP. ON NUTRITION, *supra* note 14, at 53; 1975 *Pub. Assistance Hearings*, *supra* note 96, at 720 (statement of Richard Hamilton, Executive Director, Nat'l Caucus on the Black Aged); DEVS. IN AGING 1975-1976, *supra* note 59, pt. I, at 52-53.

¹⁷⁰ See REP. ON NUTRITION, *supra* note 14, at 48.

¹⁷¹ Critics of early food stamp outreach attributed the low participation rates in part to the shortage and inconvenient locations of food stamp centers. See note 9 and accompanying text *supra*; see also REP. ON NUTRITION, *supra* note 14, at 55.

¹⁷² Title VII meals for the elderly, for example, must be offered at strategically located sites, such as churches, schools, and senior citizens' centers, within walking distance if possible. 42 U.S.C. § 3045e(a)(3) (Supp. V 1975).

pating.¹⁷³

The theme of "one-stop help" persists in outreach deliberations.¹⁷⁴ Needed assistance would be more accessible if the elderly or the disabled, for example, could take care of all their public assistance business at one office, preferably the least stigmatizing place. Although some offices now administer more than one program,¹⁷⁵ a crippled widow might still be shuffled from a Social Security office to a state rehabilitation center to a food stamp office, to wait in line at each. One way to avoid this run-around is by "outstationing"—for example, placing state social workers in or near social security offices.¹⁷⁶ Alternatively, one agency could assume some of the preliminary functions of a sister agency. In fact, one program can perform outreach for another in at least four ways:

- 1) cross-information;¹⁷⁷
- 2) cross-referral;¹⁷⁸
- 3) cross-application (or joint opportunity to apply);¹⁷⁹

¹⁷³ See DEVS. IN AGING 1975-1976, *supra* note 59, pt. 1, at 53. See generally REP. ON NUTRITION, *supra* note 14, at 55-61. Some Congressmen have recommended that households of elderly, blind, or disabled food stamp recipients receive food stamp benefits in cash to eliminate periodic trips to obtain the stamps. FOOD STAMP 1976 REP., *supra* note 5, at 609 (supplemental views). See also *Perez v. Lavine*, 412 F. Supp. 1340, 1347-48 (S.D.N.Y. 1976) (discussing effect of long lines at AFDC offices on eligible persons' opportunity to apply).

¹⁷⁴ See, e.g., 1975 Pub. Assistance Hearings, *supra* note 96, at 547 (statement of Jean Janover, Citizens' Comm. on Aging of the Community Council of Greater New York); *id.* at 664 (statement of Jonathan M. Stein, Community Legal Servs., Inc., Philadelphia); DEVS. IN AGING 1975-1976, *supra* note 59, pt. 2, at 19 (1975 annual report of Federal Council on the Aging).

¹⁷⁵ Social Security offices, for example, administer Social Security retirement and disability benefits, and SSI. State welfare offices may handle AFDC, food stamps, and state general assistance programs.

¹⁷⁶ See 1975 Pub. Assistance Hearings, *supra* note 96, at 547 (statement of Jean Janover, Citizens' Comm. on Aging of the Community Council of Greater New York) (recommending outstationing); *id.* at 618 (statement of Fernande R. Vandenberg Duffly, Legislative Coordinator, SSI Advocacy Center) (recommending outstationing); SSI Oversight Hearings, *supra* note 92, at 135-36, 149-50 (Study Group report).

¹⁷⁷ See notes 135-38 and accompanying text *supra*.

¹⁷⁸ See, e.g., 42 U.S.C. § 1382d(a) (Supp. V 1975) (referral of disabled SSI applicants to state vocational rehabilitation agencies); *id.* § 3045e(a)(6) (referral from meal sites, Title III, OAA); 20 C.F.R. § 416.230(c) (1976) (referral of SSI applicants to other programs for which they may qualify); 45 C.F.R. § 222.41 (1976) (I & R from Social Security offices); notes 84-85 and accompanying text *supra* (I & R in OAA Title III programs). See also SSI Oversight Hearings, *supra* note 92, at 131-37 (Study Group report).

¹⁷⁹ See, e.g., 20 C.F.R. § 416.2015(a) (1976) (application for SSI deemed application for state supplementation). See also Food Stamp Act of 1976, H.R. 13613, 94th Cong., 2d Sess., § 10(i), reprinted in FOOD STAMP 1976 REP., *supra* note 5, at 11 (proposing opportunity to apply for food stamps at SSI certification office).

4) automatic eligibility.¹⁸⁰

This list runs the gamut of outreach categories, from providing information through encouraging and facilitating access to insuring participation, and attests to the richness of one-stop help as an outreach resource.¹⁸¹

Even with one-stop help, however, many persons would find it difficult to get to the one-stop site. In such cases, the agency should provide—or arrange for some private organization to provide—transportation.¹⁸² *Tyson* advocates this service¹⁸³ as do the Older Americans Act and regulations promulgated under it.¹⁸⁴ The regulations also provide for personal escort services that “assist individuals who . . . are unable to use conventional means of transportation to reach needed services, or require such assistance for reasons of personal security or protection.”¹⁸⁵

Where the people cannot come to the program, effective outreach may require the program to go to the people. Some programs do this already. Connecticut's food stamp program provides for circuit riders who conduct interviews in outlying areas; the *Tyson* court applauded this activity and urged its continuation.¹⁸⁶ *Tyson* also indicated that telephone and home interviews should be substituted for office visits under a wide range of circumstances.¹⁸⁷ Acknowledging a similar need, Title VII of the Older Americans Act authorizes delivery of meals to the home-bound elderly.¹⁸⁸ Wider dispersion of application forms to private organizations as well as public agencies would also help carry programs to the eligible.

Transportation, escort, and circuit riders carry outreach far beyond the mere provision of information.¹⁸⁹ Should the law re-

¹⁸⁰ See, e.g., 42 U.S.C. § 1396a(a)(10) (Supp. V 1975) (automatic Medicaid eligibility for recipients of AFDC or SSI).

¹⁸¹ See generally KAMERMAN & KAHN, *supra* note 121, at 435-99.

¹⁸² For a general discussion of the transportation problems of the elderly and the need for a governmental response, see *Transportation: Improving Mobility for Older Americans: Hearings Before the House Subcomm. on Federal, State and Community Services of the House Select Comm. on Aging*, 94th Cong., 2d Sess. (1976). See also DEVS. IN AGING 1975-1976, *supra* note 59, pt. 1, at 46-48, 127-38; *id.*, pt. 2, at 239-44.

¹⁸³ 390 F. Supp. at 574.

¹⁸⁴ See, e.g., 42 U.S.C. §§ 3024(d), 3045e(3) (Supp. V 1975); 45 C.F.R. §§ 903.1(d)(4), 903.2(g)(4), 909.42(a)(1) (1976).

¹⁸⁵ 45 C.F.R. § 903.2(g)(5)(ii) (1976).

¹⁸⁶ See 390 F. Supp. at 559, 574.

¹⁸⁷ *Id.* at 574.

¹⁸⁸ 45 C.F.R. § 909.41 (1976).

¹⁸⁹ Under the banner of “facilitating access” an agency could go even farther to pro-

quire this "highways and byways" brand of outreach? Those who answer "no" may have any of several reasons for believing that the line should be more closely drawn. Some of these involve legitimate considerations of cost¹⁹⁰ and limited administrative resources, considerations which must be balanced against outreach goals. But opponents of extensive outreach whose objections betray discomfort with the assistance programs themselves take an unfair position. Whatever the objections to a particular program, a commitment is made when the program is instituted. All who are eligible have the right to participate—they are, in fact, entitled to benefits.¹⁹¹ Thus, even against considerations of limited resources the weight of both need and entitlement pulls the line toward more extensive outreach than most programs currently offer.

B. *Measuring Outreach*

As outreach provisions become more common in public assistance programs, the need increases for some yardstick with which to measure outreach performance. The possibility of more lawsuits, in the vein of *Bennett* and *Tyson*, challenging administrative compliance with a specific outreach mandate particularly emphasizes this need. How does a court¹⁹² determine whether a given outreach program complies with its mandate? When have administrators "reached out" far enough?¹⁹³ The relevant cases con-

vide help in filling out applications, to simplify program rules and agency organization, and generally to expedite procedures.

¹⁹⁰ But see *SSI Oversight Hearings*, *supra* note 92, at 24 (testimony of SSA Comm'r Cardwell) ("imagination and creativity," not additional financing, needed).

¹⁹¹ *Goldberg v. Kelly*, 397 U.S. 254 (1970), held that there is a statutory entitlement to public assistance benefits "for persons qualified to receive them." *Id.* at 262. See also *Baker-Chaput v. Cammett*, 406 F. Supp. 1134 (D.N.H. 1976).

Do eligible persons have a "right" to outreach? An argument for a constitutional right to outreach depends on a finding that an eligible person's entitlement and its attendant rights "are created when the statutorily defined need arises Consequently, it is at this time that the constitutional protections surrounding those rights must be first applied." *Barnett v. Lindsay*, 319 F. Supp. 610, 612 (D. Utah 1970).

¹⁹² This discussion of outreach measures presupposes a judicial context.

¹⁹³ A court assessing outreach in a cooperative federal-state program must judge both federal and state performance. In such a program, the outreach responsibility of the federal agency depends on the division of labor specified by the outreach mandate or implied by the relationship between federal and state agencies. Where the law requires a state to submit a formal plan for approval by a federal agency, that plan is particularly susceptible to judicial scrutiny, and its inadequacy may evince the federal agency's dereliction as well as the state's. See, e.g., *Bennett v. Butz*, 386 F. Supp. 1059, 1065-67 (D. Minn. 1974). Similarly, where the law equips a federal agency with powers to compel some level of outreach activity by the states, the federal agency may be responsible for deficiencies in a

tribute little systematic analysis for answering these questions.¹⁹⁴ It may, however, be helpful to distinguish two general measures: "appropriate particular means" and "potential eligibles participating."¹⁹⁵

The language of most outreach mandates suggests the first approach. Phrases such as "seek out,"¹⁹⁶ "inform,"¹⁹⁷ "encourage,"¹⁹⁸ "facilitate,"¹⁹⁹ "assist,"²⁰⁰ and even "make every effort"²⁰¹ suggest a measure that focuses on administrative activity. Other phrasing, however, sounds more result-oriented: "insure the participation,"²⁰² "assure that . . . individuals participate."²⁰³ Looking solely at the language, compliance with this latter mandate should be measured against the intended result of outreach activities: participation by the eligible.

The "appropriate particular means" measure focuses on what administrators have and have not done. A court might, for example, begin by reviewing the agency's general plan. Relevant factors would include the personnel assigned to outreach, amount of money budgeted, timetables for implementing the plan, targeting of special groups, provision for evaluating and revising the plan, and arrangements for coordinating outreach activities between administrative levels and among geographic and political subdivisions. A court measuring outreach performance would then look from the plan to its implementation and evaluate the specific ac-

state's outreach program. See, e.g., *id.* In some programs the federal agency may be responsible for conducting primary outreach activities itself.

¹⁹⁴ But see *Woodruff v. Lavine*, 399 F. Supp. 1008 (S.D.N.Y. 1975) (summary judgment denied in part), 417 F. Supp. 824 (1976) (decision on merits).

¹⁹⁵ A third basis for evaluating outreach performance might be "good faith of the administrators." Like the first, this measure focuses on the administrators' actions rather than results. The defendants in *Woodruff* made a good faith defense to attacks upon their outreach program. 399 F. Supp. at 1011.

¹⁹⁶ 45 C.F.R. § 903.2(g)(5)(i) (1976).

¹⁹⁷ 7 U.S.C. § 2019(e)(5) (Supp. V 1975).

¹⁹⁸ 42 U.S.C. § 3022(1)(C) (Supp. V 1975).

¹⁹⁹ *Id.* § 3022(3)(A).

²⁰⁰ *Id.* § 3022(1)(C) ("assist . . . to use the facilities and services available"); *id.* § 3024(c)(3) ("assists . . . to take advantage"); 45 C.F.R. § 903.79(b) (1976) ("assist . . . to become aware . . . and . . . assist . . . in having access").

²⁰¹ 42 U.S.C. § 300s-5 (Supp. V 1975).

²⁰² 7 U.S.C. § 2019(e)(5) (Supp. V 1975).

²⁰³ 45 C.F.R. § 909.42(a) (1976) ("assure that the maximum number of the hard-to-reach target group eligible individuals participate"). Note that this regulation expands the statutory outreach mandate for Title VII nutrition programs for the elderly. The statute requires states to "assure that the maximum number of eligible individuals *may have an opportunity* to participate." 42 U.S.C. § 3045e(a)(4) (Supp. V 1975) (emphasis added).

tivities undertaken. It might even consider indirect indications of outreach activity, such as the amount of money spent.²⁰⁴

One difficulty with the "appropriate particular means" test is that it presupposes a standard with which outreach performance can be compared. If the law specifies the activities that an agency must undertake or include in its formal outreach plan, or suggests a sample form for that plan, the court has a ready-made yardstick;²⁰⁵ otherwise the court must set its own gauge. For example, the food stamp outreach provision does not require *x* number of minutes of radio spots or *y* number of contacts with private organizations; the court in *Tyson* had to supply its own criteria of adequacy on these matters.²⁰⁶ That courts must apply their own concept of an "adequate outreach effort"²⁰⁷ is not a devastating criticism of this first measure of outreach performance. It illustrates, after all, a common form of judicial labor. Judges must realize, however, that use of this measure requires them to become practical empiricists, with some knowledge of the effectiveness of particular outreach activities.

The "potential eligibles participating" standard measures outreach performance by looking directly at results—specifically, the percentage of the eligible population participating in the program.²⁰⁸ Plaintiffs relied on this measure in *Woodruff v. Lavine*,²⁰⁹ a 1976 class action involving a multi-pronged attack on New York City's implementation of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program for Medicaid-eligible children.²¹⁰ In that program, the federal government required outreach to inform eligible persons about the service and to "en-

²⁰⁴ See *Bennett v. Butz*, 386 F. Supp. 1059, 1065-67 (D. Minn. 1974).

²⁰⁵ Sometimes, however, the court must look behind the standard provided. The *Tyson* court, for example, declined to apply the outreach regulations issued by FNS, commenting that "[c]ourts need not defer to an administrative construction of a statute where there are 'compelling indications that it is wrong.'" 390 F. Supp. at 551 (quoting *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381 (1969)).

²⁰⁶ 390 F. Supp. at 555-57.

²⁰⁷ *Id.*

²⁰⁸ Critics of food stamp outreach used this yardstick when they compared the number of food stamp recipients in an area to the number of persons who had participated in the commodity distribution program prior to the switchover to food stamps. See, e.g., STEINER, *supra* note 7, at 214-15. Critics of SSI outreach take the same approach when they base their criticism on the estimated two million eligible persons who have not been recruited for SSI. See note 105 and accompanying text *supra*.

²⁰⁹ 417 F. Supp. 824 (S.D.N.Y. 1976).

²¹⁰ See 42 U.S.C. §§ 1396a(13)(B), 1396d(a)(4)(B) (Supp. V 1975); 45 C.F.R. § 249.10-(a)(1), (2), (3), (b)(4)(ii) (1976).

courage" them to participate.²¹¹ Plaintiffs claimed that "since only ten to fourteen per cent of the eligible population ha[d] enrolled in the program, . . . the defendants [were] in substantial violation of the federal statute and regulations."²¹² But District Judge Weinfeld specifically refused to adopt a participation-rate measure. In an opinion that offers helpful analysis of the measure issue, he stated that "[t]he test of compliance is not the proportion of the eligible population that participates in the program, but whether the State and City have taken and are taking 'aggressive steps.'"²¹³

The *Woodruff* court was wise to sidetrack the plaintiffs' participation rate measure, for such an approach encounters at least two major obstacles. First, it rests precariously on the availability, reliability, and pertinence of statistics. Estimating the size of a program's eligible population presents a formidable and perhaps insurmountable task.²¹⁴ Second, this approach naively assumes that ineligibility and defective outreach exhaust the reasons for nonparticipation in an assistance program. Yet many eligible persons will decline participation despite aggressive and persuasive outreach, held back by pride, stubbornness, lack of need, or unwillingness to bother.²¹⁵ One hundred percent participation may be a laudable administrative goal, but it is an unreasonable judicial measure.²¹⁶

²¹¹ 417 F. Supp. at 827.

²¹² *Id.* at 826.

²¹³ *Id.* at 837.

²¹⁴ The number of persons eligible for food stamps, for example, fluctuates significantly from month to month with changing food prices and unemployment rates. See *FOOD STAMP 1976 REP.*, *supra* note 5, at 26, 29. See generally *REP. ON NUTRITION*, *supra* note 14, at 10-11, 21-24 (food stamp universe). For some programs the necessary data may simply not exist. SSI illustrates this difficulty: SSA has abandoned its own estimate of the SSI universe, and now admits that an accurate estimate is a long way off, if possible at all. See note 105 *supra*.

In addition, statistics can be manipulated. The *Tyson* court warned against dependence on statistical estimates, observing that each side in that case had managed to adjust the same kinds of statistics to further its own argument. 390 F. Supp. at 553 n.7, 554 n.9. See also *Woodruff v. Lavine*, 417 F. Supp. 824, 828-29 (S.D.N.Y. 1976) (struggle of New York City welfare administrators to identify EPSDT universe).

²¹⁵ An eligible person might reasonably decline to participate because he stands to gain only a few dollars from the program. Yet he would be part of the estimated universe.

²¹⁶ One hundred percent participation may even be an unrealistic administrative goal. See 122 CONG. REC. S5,241 (daily ed. Apr. 8, 1976) (statement of Senator Humphrey) ("no agency can 'insure participation'"). The court in *Woodruff* noted that EPSDT "is voluntary; intended beneficiaries cannot be compelled to participate. A carrot may be offered but a stick may not be used. Despite the best efforts of administrators to popularize such a program, it will still meet with resistance or indifference . . ." 417 F. Supp. at 827.

Since 1975, the federal food stamp regulations have qualified the "insure" component

In *Woodruff*, the court rejected the testimony of plaintiffs' experts that 80-85% participation would constitute success for the program.²¹⁷ Such a discounted goal would be arbitrary, and, as the court in *Woodruff* concluded, "cannot by itself serve to gauge . . . performance."²¹⁸

On the surface, both the *Bennett* and *Tyson* courts appear to have used this second measure of outreach performance.²¹⁹ However, closer analysis reveals that *Bennett* held the defendants liable for failing under the first measure. Judge Lord emphasized participation rates only to dramatize the need for outreach, apparently reasoning that if the full participation test is not met, the "appropriate particular means" standard applies.²²⁰ The confusion between these two measures is especially misleading in *Tyson*. Judge Blumenfeld spoke so emphatically of insuring participation²²¹ and the statutory goal of "full participation"²²² that he contributed to the mistaken belief that anything less than full participation violates the statutory outreach mandate.²²³ Congressional efforts to "soften" the food stamp outreach mandate²²⁴ may represent, at least in part, a reaction to this misinterpretation. But such a reading of *Tyson* overlooks that opinion's careful reservation that "perfection is not called for. The statute requires the state to do what can be done. The controlling words in the statute are 'effective

of the mandate to require efforts to "insure the participation of eligible households *which wish to participate*." 7 C.F.R. § 271.1(k) (1977) (emphasis added).

²¹⁷ 417 F. Supp. at 826-27.

²¹⁸ *Id.* at 827. Despite its drawbacks, the participation rate measure continues to be used. The stipulation for dismissal in *Westside Mothers Welfare Rights Org. v. Butz*, [1977] Pov. L. REP. ¶ 22,975 (W.D. Mich. 1976) (stip. & order), provided that the state's compliance with the statutory outreach mandate "is properly measured only by the actual effectiveness of State Food Stamp outreach activities." Stipulation for Dismissal at 1.

²¹⁹ See *Bennett v. Butz*, 386 F. Supp. at 1066-69; *Tyson v. Norton*, 390 F. Supp. at 553-54.

²²⁰ The court stated that "deficiencies in outreach efforts and outreach plans would be immaterial if, during [fiscal year 1973], the purposes of the Food Stamp Act had been adequately met without expenditure of the surplus funds. However, the data presented to the Court indicate that food stamp participation in fiscal 1973 was essentially static and that the needs of millions of persons remained unmet." 386 F. Supp. at 1067-68. The result is a two-step test: First, determine whether the goal of outreach has been achieved. If so, the defendants' actions are "immaterial." If not, determine whether the defendants' actions have been adequate.

²²¹ See, e.g., 390 F. Supp. at 551, 552, 557-59, 574.

²²² See, e.g., *id.* at 550, 552, 557, 574.

²²³ See, e.g., FOOD STAMP 1976 REP., *supra* note 5, at 335 (committee report), 630 (dissenting views); 122 CONG. REC. S5,241 (daily ed. Apr. 8, 1976) (statement of Senator Humphrey); *id.* at S5,245 (statement of Senator McGovern).

²²⁴ See notes 58-66 and accompanying text *supra*.

action.’”²²⁵ By noting that the complete mandate does not read “insure the participation” but rather “undertake effective action . . . [to] insure the participation,” the court made a subtle shift from the second measure to the first.²²⁶ Neither the *Bennett* nor the *Tyson* court clearly differentiated between these two measures. What they did establish is that low participation rates, *coupled with* administrative foot-dragging, violate the Food Stamp Act’s outreach directive.

These distinctions only begin to sketch an outline for evaluating outreach. Future developments will undoubtedly necessitate more thorough and systematic treatment. Hopefully the “law of outreach” will crystallize in a form that holds administrators to high standards—requiring “vigilant,” “aggressive,” and “constant” efforts²²⁷—but holds them liable only for their own actions or inaction, and not for results beyond their control.²²⁸

CONCLUSION

This Note has surveyed the current role of outreach in certain major federally funded public assistance programs, beginning with the evolution of the “granddaddy” food stamp outreach provision. Although Congress, courts, and commentators have recently focused attention on the subject, important questions as to the scope of outreach and the proper measure of outreach performance remain unanswered. Indeed, in the wide field of outreach, much remains to be organized before even the questions are clear. There will be fundamental, even philosophical, questions about the obligation of government to fully inform persons of their right to legislated assistance, about the extent to which government must remove obstacles to the participation of persons eligible for these programs, and about the commitment with which we intend to reach out to the needy.

Mary Harter

²²⁵ 390 F. Supp. at 559-60.

²²⁶ See *id.* at 559. The distinction rests on interpreting the word “effective” to mean “tending to produce the desired result.” If “effective” was construed instead to mean “producing the desired result,” a plausible alternative definition of the word, then the proper measure of compliance would be the resulting level of participation. But that interpretation makes the words “undertake effective action” superfluous, violating the principle of statutory construction that attributes meaning to every phrase.

²²⁷ *Woodruff v. Lavine*, 417 F. Supp. at 837.

²²⁸ This discussion has assumed a judicial context. In other contexts—*e.g.*, for administrators evaluating their own efforts—result-oriented measures would be valuable.